

1  
2  
3  
4  
5 UNITED STATES DISTRICT COURT  
6 WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

7 CHARITY W.,

8 Plaintiff,

9 v.

10 ANDREW M. SAUL,  
11 Commissioner of Social Security,<sup>1</sup>

12 Defendant.

CASE NO. C19-5191-MAT

ORDER RE: SOCIAL SECURITY  
DISABILITY APPEAL

13 Plaintiff proceeds through counsel in her appeal of a final decision of the Commissioner of  
14 the Social Security Administration (Commissioner). The Commissioner denied plaintiff's  
15 application for Supplemental Security Income (SSI) after a hearing before an Administrative Law  
16 Judge (ALJ). Having considered the ALJ's decision, the administrative record (AR), and all  
17 memoranda of record, this matter is AFFIRMED.

18 **FACTS AND PROCEDURAL HISTORY**

19 Plaintiff was born on XXXX, 1977.<sup>2</sup> She completed high school and two years of college,  
20 and previously worked as a security guard and child monitor. (AR 32, 48, 54-55, 236.)

21 Plaintiff protectively filed an SSI application on October 16, 2015, alleging disability

22  
23 <sup>1</sup> Andrew M. Saul is now Commissioner of the Social Security Administration (SSA). Pursuant to  
Federal Rule of Civil Procedure 25(d), Andrew M. Saul is substituted for Nancy A. Berryhill as defendant.

<sup>2</sup> Dates of birth must be redacted to the year. Fed. R. Civ. P. 5.2(a)(2) and LCR 5.2(a)(1).

1 beginning February 15, 2012. (AR 209.) It was denied initially and on reconsideration.

2 On November 2, 2017, ALJ Allen Erickson held a hearing, taking testimony from plaintiff  
3 and a vocational expert (VE). (AR 40-92.) On March 21, 2018, the ALJ issued a decision finding  
4 plaintiff not disabled from the application date through the date of the decision. (AR 15-34.)

5 Plaintiff timely appealed. The Appeals Council denied plaintiff's request for review on  
6 January 19, 2019 (AR 1), making the ALJ's decision the final decision of the Commissioner.  
7 Plaintiff appealed this final decision of the Commissioner to this Court.

### 8 **JURISDICTION**

9 The Court has jurisdiction to review the ALJ's decision pursuant to 42 U.S.C. § 405(g).

### 10 **DISCUSSION**

11 The Commissioner follows a five-step sequential evaluation process for determining  
12 whether a claimant is disabled. *See* 20 C.F.R. §§ 404.1520, 416.920 (2000). At step one, it must  
13 be determined whether the claimant is gainfully employed. The ALJ found plaintiff had not  
14 engaged in substantial gainful activity since the application date. At step two, it must be  
15 determined whether a claimant suffers from a severe impairment. The ALJ found plaintiff's  
16 generalized anxiety disorder, agoraphobia, major depressive disorder, lumbar degenerative disc  
17 disease and degenerative joint disease, and right shoulder tendonitis severe. Step three asks  
18 whether a claimant's impairments meet or equal a listed impairment. The ALJ found plaintiff's  
19 impairments did not meet or equal the criteria of a listed impairment.

20 If a claimant's impairments do not meet or equal a listing, the Commissioner must assess  
21 residual functional capacity (RFC) and determine at step four whether the claimant has  
22 demonstrated an inability to perform past relevant work. The ALJ found plaintiff able to perform  
23 light work, with lifting and carrying twenty pounds occasionally and ten pounds frequently;

1 standing and/or walking and sitting for at least six hours in an eight-hour workday; able to  
2 occasionally climb ladders, ropes, or scaffolds and crawl; able to frequently, but not continuously  
3 perform bilateral handing and fingering and to occasionally perform overhead reaching with the  
4 dominant right arm; able to tolerate occasional exposure to vibration and extremely cold  
5 temperatures; able to understand, remember, and apply short, simple instructions, while  
6 performing routine tasks, not in a fast-paced production-type environment, making only simple  
7 decisions; and able to have no more than occasional interaction with the general public and co-  
8 workers. With that assessment, the ALJ found plaintiff unable to perform past work.

9       If a claimant demonstrates an inability to perform past relevant work, or has no past  
10 relevant work, the burden shifts to the Commissioner to demonstrate at step five that the claimant  
11 retains the capacity to make an adjustment to work that exists in significant levels in the national  
12 economy. With the assistance of the VE, the ALJ found plaintiff capable of performing other jobs,  
13 such as work as a lab sample carrier, garment sorter, and mail clerk.

14       This Court's review of the ALJ's decision is limited to whether the decision is in  
15 accordance with the law and the findings supported by substantial evidence in the record as a  
16 whole. *See Penny v. Sullivan*, 2 F.3d 953, 956 (9th Cir. 1993). *Accord Marsh v. Colvin*, 792 F.3d  
17 1170, 1172 (9th Cir. 2015) ("We will set aside a denial of benefits only if the denial is unsupported  
18 by substantial evidence in the administrative record or is based on legal error.") Substantial  
19 evidence means more than a scintilla, but less than a preponderance; it means such relevant  
20 evidence as a reasonable mind might accept as adequate to support a conclusion. *Magallanes v.*  
21 *Bowen*, 881 F.2d 747, 750 (9th Cir. 1989). If there is more than one rational interpretation, one of  
22 which supports the ALJ's decision, the Court must uphold that decision. *Thomas v. Barnhart*, 278  
23 F.3d 947, 954 (9th Cir. 2002).

1 Plaintiff alleges error in the rejection of a medical opinion and resulting harm to the RFC  
2 and at step five. She requests remand to cure the error. The Commissioner denies error and  
3 requests the decision be affirmed.

#### 4 Medical Opinion

5 Plaintiff avers the ALJ erred in evaluating the opinion of examining psychologist Dr.  
6 Daniel Pratt. In general, more weight should be given to the opinion of a treating doctor than to a  
7 non-treating doctor, and more weight to the opinion of an examining doctor than to a non-  
8 examining doctor. *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1996). Where a doctor's opinion  
9 is contradicted, as in this case, the ALJ must provide specific and legitimate reasons, supported by  
10 substantial evidence in the record, for rejecting the opinion. *Id.* at 830-31.

11 Dr. Pratt completed an evaluation of plaintiff on behalf of the Department of Social and  
12 Health Services (DSHS) on August 25, 2016. (AR 779-83.) In addition to a number of moderate  
13 limitations, Dr. Pratt assessed marked limitations in relation to detailed instructions; performing  
14 tasks within a schedule, maintaining regular attendance, and being punctual within customary  
15 tolerances without special supervision; asking simple questions or requesting assistance;  
16 communicating and performing effectively in a work setting; maintaining appropriate behavior in  
17 a work setting; and completing a normal work day and week without interruptions from  
18 psychologically based symptoms. (AR 781.)

19 The ALJ found many of the ratings from Dr. Pratt consistent with the RFC. (AR 29.) He  
20 assigned some of the assessed ratings very little weight based on insufficient supportive evidence.  
21 (AR 29-30.) Dr. Pratt did not, for example, explain the basis for the assessment of marked  
22 limitations in the ability to ask simple questions or request assistance, communicate or perform  
23 effectively, and maintain appropriate behavior, and the ALJ found no explanation evident from the

1 evaluation findings. (AR 30.) The ALJ elaborated as follows:

2           Despite observing tearfulness and psychomotor slowing, the doctor  
3           did not state that the claimant had any difficulty communicating her  
4           symptoms and did not state that her behavior was inappropriate in  
5           any way. Furthermore, the record as a whole shows that the  
6           claimant was able to ask questions and request assistance, in that she  
7           sought DSHS benefits, went to Francis House to obtain household  
8           supplies, and asked her Greater Lakes providers to provide in-home  
9           care. Furthermore, the claimant's history of supervising her kids  
10          through their online home-schooling program shows that she is fully  
11          capable of performing in these domains.

12 (*Id.* (internal citations to record omitted).) The ALJ further observed other alleged limitations  
13 "cannot be determined by a single evaluation," such as performing activities in a schedule/  
14 maintaining attendance/being punctual and completing a normal work day and week. (*Id.*)  
15 Because many of Dr. Pratt's moderate and marked ratings found insufficient support in his clinical  
16 findings, are contradicted by the record, or required greater familiarity with plaintiff and her  
17 functioning than offered in a one-time evaluation, the ALJ assigned them very little weight.

18           Plaintiff argues Dr. Pratt's observations and testing results completely explain his opinion  
19 of a marked limitation in the ability to maintain appropriate behavior in a work setting. Dr. Pratt  
20 observed tearfulness, flat affect, psychomotor retardation and soft voice, pessimistic comments,  
21 difficulty concentrating, and anxious and tense presentation. (AR 780.) Abnormal findings on  
22 mental status examination (MSE) included monotone, brief and paused speech, guarded and at  
23 times fearful presentation, fluctuating flat affect and tearfulness, inability to perform "serial 7s",  
and concrete interpretation of parables. (AR 782.) Plaintiff's self-reporting scores on depression  
and anxiety inventories fell in the severe range and her performance on other testing suggested she  
put forth adequate effort. (*Id.*)

          Plaintiff also argues the ALJ erred in concluding marked limitations in performing

1 activities in a schedule/maintaining attendance/being punctual and completing a normal work day  
2 and week could not be determined in a single evaluation. She cites to numerous cases in which  
3 courts have found an ALJ may not reject a doctor's opinion based on the fact it came from a one-  
4 time examination. (*See* Dkt. 8 at 4.)

5 While relevant to the assignment of weight, the mere fact a medical source examined a  
6 claimant only once does not alone serve as a legally sufficient basis to reject a medical opinion.  
7 *See, e.g., Brown v. Berryhill*, C17-1470, 2018 U.S. Dist. LEXIS 158247 at \*14 (W.D. Wash. Sep.  
8 17, 2018); *Ford v. Berryhill*, C17-1343, 2018 U.S. Dist. LEXIS 72244 at \*5-6 (W.D. Wash. Apr.  
9 30, 2018); *Gopher v. Comm'r of Soc. Sec.*, 281 F. Supp. 3d 1102, 1110 (E.D. Wash. 2017); *Lopez*  
10 *v. Colvin*, 194 F. Supp. 3d 903, 917 (D. Ariz. July 11, 2016). *See also* 20 C.F.R. § 416.927(c).  
11 The ALJ must consider all medical opinions, including those of examining providers. 20 C.F.R.  
12 § 416.927(b), (c). "Discrediting an opinion because the examining doctor only saw claimant one  
13 time would effectively discredit most, if not all, examining doctor opinions." *Yeakey v. Colvin*,  
14 C13-5598, 2014 U.S. Dist. LEXIS 106081 at \*16-17 (W.D. Wash., June 10, 2014), *adopted by*  
15 2014 U.S. Dist. LEXIS 105691 (W.D. Wash. July 29, 2014). Nor can it be said the ALJ here  
16 properly rejected the specific limitations identified as incapable of determination through a single  
17 evaluation. *Cara C. v. Comm'r of Soc. Sec.*, C19-5000, 2019 U.S. Dist. LEXIS 126776 at \*10-11  
18 (W.D. Wash. July 30, 2019) (finding error in ALJ's suggestion a single examination can never  
19 provide adequate information as to ability to complete a normal workday/week: "Psychological  
20 examinations are designed to elicit information from which examiners can infer more than they  
21 can observe directly; a qualified examiner need not observe a claimant for an entire day at work in  
22 order to infer the claimant's ability to complete a workday. The ALJ essentially made a medical  
23 judgment that Dr. Irwin had insufficient information to infer Plaintiff's ability to complete a

1 normal workday/week, a judgment an ALJ is not qualified to make.”)

2 Impermissible reliance on the fact of a one-time examination may, however, be found  
3 harmless where the ALJ provides other adequate reasons for rejecting a doctor’s opinion. *Brown*,  
4 2018 U.S. Dist. LEXIS 158247 at \*14-18. *See also Gopher*, 281 F. Supp. 3d at 1111-12 (three  
5 erroneous reasons harmless given three other germane reasons offered for rejecting social worker’s  
6 opinion); *Henderson v. Astrue*, 634 F. Supp. 2d 1182, 1194 (E.D. Wash. 2009) (three erroneous  
7 reasons for rejecting physicians’ opinions harmless given provision of two adequate reasons). That  
8 is, an ALJ’s error may be deemed harmless where it is “‘inconsequential to the ultimate  
9 nondisability determination.’” *Molina v. Astrue*, 674 F.3d 1104, 1115 (9th Cir. 2012). *See also*  
10 *Carmickle v. Comm’r, Soc. Sec. Admin.*, 533 F.3d 1155, 1162-63 (9th Cir. 2008) (where ALJ  
11 provides valid reasons supporting an assessment and substantial evidence supports the conclusion,  
12 an error in the assessment may be deemed harmless).

13 In this case, the ALJ provided other reasons for rejecting Dr. Pratt’s opinion. Those reasons  
14 include a lack of sufficient supporting evidence and explanation in Dr. Pratt’s evaluation,  
15 contradictory evidence in the record, and inconsistency with evidence of plaintiff’s activity. *See*  
16 *Tommasetti v. Astrue*, 533 F.3d 1035, 1041 (9th Cir. 2008) (ALJ may reject opinion based on  
17 inconsistencies between opinion and the record); *Bayliss v. Barnhart*, 427 F.3d 1211, 1216 (9th  
18 Cir. 2005) (ALJ may reject opinion due to discrepancy or contradiction between opinion and the  
19 physician’s own notes or observations); *Rollins v. Massanari*, 261 F.3d 853, 856 (9th Cir. 2001)  
20 (ALJ may reject opinion as inconsistent with a claimant’s level of activity). *See also Batson v.*  
21 *Commissioner*, 359 F.3d 1190, 1195 (9th Cir. 2004) (ALJ may reject opinion that is “conclusory,  
22 brief, and unsupported by the record as a whole . . . or by objective medical findings[.]”); 20 C.F.R.  
23 § 416.927(c) (the more relevant evidence, the better an explanation provided in support of an

1 opinion, and the more consistent an opinion is with the record as a whole, the more weight the  
2 opinion will be given; an ALJ also properly considers any factor that tends to support or contradict  
3 the opinion of a physician).

4 As noted by plaintiff, the ALJ documented observations of various symptoms and found  
5 plaintiff's concentration and abstract thought did not fall within normal limits. (AR 780, 783.)  
6 However, the ALJ also observed plaintiff's adequate appearance, eye contact, and cooperative  
7 attitude, and found her thought process and content, orientation, perception, memory, fund of  
8 knowledge, insight, and judgment all fell within normal limits. (AR 782-83.) He pointed to  
9 evidence in the record reflecting plaintiff's ability to ask questions and request assistance, and her  
10 ability to supervise her children's online home-schooling program.

11 "The ALJ is responsible for resolving conflicts in the medical record." *Carmickle*, 533  
12 F.3d at 1164; *Thomas*, 278 F.3d at 956-57. When evidence reasonably supports either confirming  
13 or reversing the ALJ's decision, the Court may not substitute its judgment for that of the ALJ.  
14 *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999). "Where the evidence is susceptible to more  
15 than one rational interpretation, it is the ALJ's conclusion that must be upheld." *Morgan v.*  
16 *Commissioner of the SSA*, 169 F.3d 595, 599 (9th Cir. 1999).

17 In this case, the ALJ rationally interpreted the record as containing insufficient support for  
18 and evidence and activities contradicting Dr. Pratt's opinion. These findings serve as specific and  
19 legitimate reasons sufficient for the ALJ's decision regarding the opinion of Dr. Pratt.

20 The Court must, moreover, look to "the record as a whole to determine whether [an] error  
21 alters the outcome of the case." *Molina*, 674 F.3d at 1115. The record in this case contains four  
22 other opinions addressing plaintiff's mental impairments. Psychologist Dr. Brett Valette assessed  
23 no limitations in functioning following an April 30, 2016 examination. (AR 707-08.) He found



1 plaintiff vague and evasive, with limited eye contact, distant and abrupt, not appearing panicky or  
2 in pain, calm behavior, and flat affect; with clear, but short and non-spontaneous speech, not freely  
3 giving information and symptoms and providing short, non-descriptive responses, without many  
4 details; and with intact thought process. (AR 706.) Dr. Valette believed plaintiff did not cooperate  
5 fully during the evaluation, adding that “she was vague, evasive, she gave conflicting information,  
6 and the information provided needs to be interpreted with caution.” (*Id.*) On MSE, plaintiff had  
7 full immediate recall, partial recall after five minutes, performed serial 7s with one mistake and  
8 “serial 3” subtractions without error, spelled “world” correctly forwards and backwards, and had  
9 limited fund of knowledge and abstract thought, but judgment appearing intact. (AR 707.) Dr.  
10 Valette stated: “At the end of the evaluation she says, ‘I just want you to know my depression is  
11 so bad, I can’t function, my meds don’t work. I just can’t do anything.’ This is directly opposite  
12 of what she told me earlier.” (AR 707.) Non-examining state agency psychological consultants,  
13 Drs. John Gilbert and Winifred Ju, found plaintiff’s mental impairments not severe, on May 2,  
14 2016 and August 30, 2016 respectively. (AR 100-01, 114-15.) Finally, Mychelle Bowers, a  
15 physician assistant, opined on August 8, 2016 that plaintiff’s depression prevents focusing and her  
16 anxiety makes it difficult for her to be around others. (AR 776.)

17         The ALJ found plaintiff’s claim of debilitating social anxiety “not at all reflected in the  
18 treatment record” and noted Dr. Valette assessed no limitation in social functioning. (AR 28.) He  
19 nevertheless found it likely plaintiff’s depression and anxiety would at times interfere with her  
20 ability to interact with coworkers and the public. (AR 28.) The ALJ also, considering plaintiff’s  
21 depressed and anxious mood and performance on MSE with both Dr. Valette and Dr. Pratt, found  
22 plaintiff limited to some degree in relation to the type or complexity of tasks she could perform  
23 and in relation to concentration. “But given her reported activities as well as her performance on

1 [MSE] with Dr. Valette”, the ALJ found no further limitations required than those assessed. (*Id.*)

2 The ALJ assigned limited weight to Dr. Valette’s opinion. (AR 28-29.) While  
3 acknowledging the contradictory statements made to Dr. Valette and his perception of a lack of  
4 cooperation, the ALJ found plaintiff’s performance on MSE supported some limitation in the  
5 complexity of tasks plaintiff could perform on a regular basis. (AR 29.) While her presentation  
6 and subjective reports of social anxiety to her counselor were not fully consistent with her claims  
7 at hearing or to Dr. Pratt, the ALJ found support for limited interaction with co-workers and the  
8 public, simple decision making, and a work environment that is not fast-paced. The ALJ largely  
9 agreed with the opinions of Bower as to plaintiff’s difficulty focusing and being around others and  
10 assigned them significant weight. (AR 29.) He gave very little weight to the opinions of Drs.  
11 Gilbert and Ju. (AR 30.) While they raised relevant points regarding plaintiff’s effort on  
12 evaluation and the accuracy of her claimed limitations, the ALJ found significant limitations  
13 supporting the existence of severe mental impairments.

14 Plaintiff, in sum, fails to demonstrate the ALJ’s consideration of the fact of Dr. Pratt’s one-  
15 time examination constituted harmful error. Instead, considering both the specific and legitimate  
16 reasons offered in relation to the opinion of Dr. Pratt and the record as a whole, the Court finds the  
17 ALJ’s error harmless and the decision supported by substantial evidence.

### 18 CONCLUSION

19 For the reasons set forth above, this matter is AFFIRMED.

20 DATED this 19th day of September, 2019.

21 

22 Mary Alice Theiler  
23 United States Magistrate Judge